

Amendment After Final Rejection
Serial No. 09/478,080

Docket No. N17,254

REMARKS

Entry of this Amendment and reconsideration are respectfully requested in view of the amendments made to the claims and for the remarks made herein.

Claims 1-3, 5-7 and 9-19 are pending and stand rejected.

Claims 1,-3, 5-7 and 9-19 stand rejected under 35 USC 103(a) as being unpatentable over Okada (USP no. 5,809454) in view of Itakura (USP no. 5,901,149) and further in view of Balakrishnam (5,566,208). The Office Action states that the "combination of Okada in view of Itakura does not explicitly teach adapting the reference values dependent upon the variations of the difference value, however, Balakrishnan teaches the changing of the range of delay dependent upon the changing rates themselves..." (see instant Office Action, page 3, lines 18-21).

Applicant respectfully disagrees with and explicitly traverses the reason for rejecting the claims.

As the Okada and Itakura references were cited in the prior Office Action in rejecting claim 1-3, 5-7 and 9-19, applicant's arguments made in the response to the rejection of the claims in the prior Office Action are applicable to the rejection of the claims in the instant Office Action and are reasserted, as if in full, herein.

Balakrishnam discloses a system with an encoder buffer having an effective size that varies automatically with the channel bit-rate. Balakrishnam more specifically discloses that "[t]he encoding rate is varied so as to maintain a fill level in the encoder buffer within limits. In the preferred embodiment, the logical encoder buffer has a size which is maintained at $R\Delta T(1-m_1)-M$ where R is the average transmission bit-rate, which may vary, ΔT is the fixed delay between the encoding and decoding process for a transmitted video signal, $R(1-m_m)$ is the minimum instantaneous transmission rate that the communication system achieves at average rate R and M is the maximum total buffer storage in the communication system. When the decoder buffer has a size less than $R\Delta T(1+m_2)$ where $R(1+m_2)$ is the maximum instantaneous transmission rate at average rate R, the encoder buffer fill level is maintained above a minimum level that is equal to the amount by which the decoder buffer is less than $R\Delta T(1+m_2)$." (see Abstract).

In summary, Balakrishnam teaches changing a fill level based on the level of the

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decoder buffer and the delay time is the delay between encoding and decoding processes. However, Balakrishnam fails to teach or suggest any processing associated with determining a difference value between a packet delay and a reference value or adapting the reference value in dependence upon the variation of the difference value (i.e., packet delay), as is recited in the claims.

A claimed invention is *prima facie* obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations.

In this case, combination of Okada and Itakura is deficient in reciting a material element of the invention recited in claim 1, for example, and, contrary to the statements made in the Office Action, Balakrishnam provides no teaching or suggestion to correct the deficiency noted in the combination of Okada and Itakura. Hence, even if there were some motivation to combine the teachings of the cited reference, which applicant believes does not exist and need not discuss herein, the combined device of Okada, Itakura and Balakrishnam fails to teach all the features recited in independent claim 1.

Accordingly, the invention recited in claim 1 is not rendered obvious by the teachings of the cited reference, as the combined device fails to recite all the elements claimed in independent claim 1.

With regard to independent claims 9 and 18, these claims recite subject matter similar to that recited in claim 1 and have been rejected citing the same references used in rejecting claim 1. Accordingly, applicant's remarks made in response to the rejection of claim 1 are also applicable in response to the rejection of claims 9 and 18. Thus, in view of the remarks made with regard to the rejection of claim 1, which are reasserted, as if in full, in response to the rejection of claims 9 and 18, applicant submits that the reason for the rejection of these claims has been overcome and can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

With regard to the remaining claims, these claims ultimately depend from independent claims 1, 9 and 18, respectively, which have been shown not to be rendered

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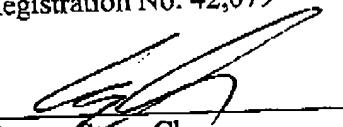
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obvious, and allowable, in view of the cited references. Accordingly, the aforementioned claims are also allowable by virtue of their dependence from an allowable base claim.

For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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